

AMENDED IN ASSEMBLY MARCH 24, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 473**

**Introduced by Assembly Member Correa**

February 14, 2003

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An act to amend Sections 7071.17, 7085.5, 7085.6, and 7090.1 of the Business and Professions Code, relating to contractors.

LEGISLATIVE COUNSEL'S DIGEST

AB 473, as amended, Correa. Contractors.

Existing law, the Contractor's State License Law, provides for licensing and regulation of contractors by the Contractors' State License Board. Existing law establishes an arbitration process administered by the board to resolve disputes between contractors and consumers. The failure of a contractor to comply with an arbitration award results in the automatic suspension of the contractor's license by operation of law within 30 days following notification of the contractor by the board, and results in revocation of the license after one year in the absence of a reinstatement request made by the contractor upon complying with the arbitration award. Existing law provides a similar license suspension and revocation process relative to a contractor who fails to pay a civil penalty or comply with an order of correction or an order to pay a specified sum to an injured party in lieu of correction.

This bill, in both of the situations described above, would instead provide for the revocation of the license within 90 days, but would authorize the registrar of the board, for good cause, to delay the revocation for not more than one year.

Existing law authorizes an arbitrator to grant any remedy or relief deemed just and equitable and within the scope of the board's referral to the arbitrator and the requirements of the board, including specific performance of a contract as well as monetary damages.

This bill would delete the authority of an arbitrator to order specific performance of a contract.

Existing law requires the board to pay the expenses of one expert witness in an arbitration proceeding upon the request of either party.

This bill would require the board to pay those expenses only if the board determines that the services of the expert witness are necessary.

Existing law provides that a contractor who refuses to pay a final court judgment or final arbitration award relative to failing to pay a contractor, consumer, materials supplier, or employee must file a judgment bond with the board that is sufficient to guarantee payment of the judgment, in order for the contractor to be licensed.

This bill would revise and recast these provisions.

This bill would make other related changes.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 7071.17 of the Business and Professions  
2 Code is amended to read:  
3 7071.17. (a) Notwithstanding any other provision of law, the  
4 board shall require, as a condition precedent to accepting an  
5 application for licensure, renewal, reinstatement, or to change  
6 officers or other personnel of record, that an applicant, previously  
7 found to have failed or refused to pay a contractor, subcontractor,  
8 consumer, materials supplier, or employee based on an ~~entered and~~  
9 unsatisfied final judgment from a court of law, file or have on file  
10 with the board a bond sufficient to guarantee payment of an  
11 amount equal to the unsatisfied final judgment or judgments. The  
12 applicant shall have 90 days from the date of notification by the  
13 board to file the bond or the application shall become void and the  
14 applicant shall reapply for issuance, reinstatement, or reactivation  
15 of a license. The board may not issue, reinstate, or reactivate a  
16 license until the bond is filed with the board. The bond required by  
17 this section is in addition to the contractor's bond. The bond shall  
18 be on file for a minimum of one year, after which the bond may be



1 removed by submitting proof of satisfaction of all debts. The  
 2 applicant may provide the board with a notarized copy of any  
 3 accord, reached with any individual holding an unsatisfied final  
 4 judgment, to satisfy a debt in lieu of filing the bond. The board  
 5 shall include on the license application for issuance, reinstatement,  
 6 or reactivation, a statement, to be made under penalty of perjury,  
 7 as to whether there are any entered and unsatisfied judgments  
 8 against the applicant on behalf of contractors, subcontractors,  
 9 consumers, materials suppliers, or the applicant's employees.  
 10 Notwithstanding any other provision of law, if it is found that the  
 11 applicant falsified the statement then the license will be  
 12 retroactively suspended to the date of issuance and the license will  
 13 stay suspended until the bond, satisfaction of judgment, or  
 14 notarized copy of ~~an accord reached with any individual holding~~  
 15 ~~an unsatisfied final judgment~~ *any accord applicable under this*  
 16 *section* is filed.

17 (b) Notwithstanding any other provision of law, all licensees  
 18 shall notify the registrar in writing of any ~~entered and unsatisfied~~  
 19 ~~final judgment or unsatisfied arbitration award~~ imposed on the  
 20 ~~licensee within 90 days from the date of judgment or arbitrator's~~  
 21 ~~decision~~. If the licensee fails to notify the registrar in writing  
 22 within 90 days, the license shall be automatically suspended on the  
 23 date that the registrar is informed, or is made aware of the  
 24 unsatisfied ~~final judgment or arbitration award~~. The suspension  
 25 shall not be removed until proof of satisfaction of the judgment ~~or~~  
 26 ~~arbitration award~~, or in lieu thereof, a notarized copy of an accord  
 27 ~~is received by~~ *submitted to* the registrar. If the licensee notifies the  
 28 registrar in writing within 90 days of the imposition of any ~~entered~~  
 29 ~~and unsatisfied final judgment or arbitration award~~, the licensee  
 30 shall, as a condition to the continual maintenance of the license,  
 31 file or have on file with the board a bond sufficient to guarantee  
 32 payment of an amount equal to all unsatisfied judgments ~~and~~  
 33 ~~arbitration awards~~ applicable under this section. The licensee has  
 34 90 days from date of notification by the board to file the bond or  
 35 at the end of the 90 days the license shall be automatically  
 36 suspended. In lieu of filing the bond required by this section, the  
 37 licensee may provide the board with a notarized copy of any  
 38 accord reached with any individual holding an unsatisfied final  
 39 ~~judgment or arbitration award~~.

(c) By operation of law, failure to maintain the bond or failure to abide by the accord shall result in the automatic suspension of any license to which this section applies.

(d) A license that is suspended for failure to comply with the provisions of this section can only be reinstated when proof of satisfaction of all debts is made, or when a notarized copy of an accord has been filed as set forth under this section.

(e) This section applies only with respect to an unsatisfied *final judgment or arbitration award* that is substantially related to the construction activities of a licensee licensed under this chapter, or to the qualifications, functions, or duties of the license.

(f) Except as otherwise provided, this section shall not apply to an applicant or licensee when the financial obligation covered by this section has been discharged in a bankruptcy proceeding.

(g) Except as otherwise provided, the bond shall remain in full force in the amount posted until the entire debt is satisfied. If, at the time of renewal, the licensee submits proof of partial satisfaction of the financial obligations covered by this section, the board may authorize the bond to be reduced to the amount of the unsatisfied portion of the outstanding ~~judgment or arbitration award~~. When the licensee submits proof of satisfaction of all debts, the bond requirement may be removed.

(h) The board shall take the actions required by this section upon notification by any party having knowledge of the outstanding judgment upon a showing of proof of the judgment.

(i) *For the purposes of this section, the term “judgment” includes any final arbitration award where the time to file a petition for a trial de novo or a petition to vacate or correct the arbitration award has expired, and no petition is pending.*

(j) The qualifying person and any member of the licensee or personnel of the licensee named as a judgment debtor in an unsatisfied final judgment from a court of law shall be automatically prohibited from serving as an officer, director, associate, partner, owner, qualifying individual, or other personnel of record of another licensee. This prohibition shall cause the license of any other existing renewable licensed entity with any of the same personnel of record as the judgment debtor licensee to be suspended until the license of the judgment debtor is reinstated or until those same personnel of record disassociate themselves from the renewable licensed entity.

~~(j)–~~

(k) For purposes of this section, a cash deposit may be submitted in lieu of the bond.

~~(k)–The~~

~~(l) Notwithstanding subdivision (f), the failure of a licensee to notify the registrar of an entered and any unsatisfied judgment or unsatisfied arbitration award in accordance with this section is cause for disciplinary action, whether or not the resulting financial obligation is discharged in a bankruptcy proceeding..~~

SEC. 2. Section 7085.5 of the Business and Professions Code is amended to read:

7085.5. Arbitrations of disputes arising out of cases filed with or by the board shall be conducted in accordance with the following rules:

(a) All “agreements to arbitrate” shall include the names, addresses, and telephone numbers of the parties to the dispute, the issue in dispute, and the amount in dollars or any other remedy sought. The appropriate fee shall be paid by the board from the Contractors’ License Fund.

(b) (1) The board or appointed arbitration association shall appoint an arbitrator in the following manner: immediately after the filing of the agreement to arbitrate, the board or appointed arbitration association shall submit simultaneously to each party to the dispute, an identical list of names of persons chosen from the panel. Each party to the dispute shall have seven days from the mailing date in which to cross off any names to which it objects, number the remaining names to indicate the order of preference, and return the list to the board or appointed arbitration association. If a party does not return the list within the time specified, all persons named in the list are acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the board or appointed arbitration association shall appoint an arbitrator to serve. If the parties fail to agree on any of the parties named, if acceptable arbitrators are unable to act, or if, for any other reason, the appointment cannot be made from the submitted lists, the board or appointed arbitration association shall have the power to make the appointment from among other members of the panel without the submission of any additional lists. Each dispute shall be heard and determined by one arbitrator unless the board or appointed

1 arbitration association, in its discretion, directs that a greater  
2 number of arbitrators be appointed.

3 (2) In all cases in which a complaint has been referred to  
4 arbitration pursuant to subdivision (b) of Section 7085, the board  
5 or the appointed arbitration association shall have the power to  
6 appoint an arbitrator to hear the matter.

7 (3) The board shall adopt regulations setting minimum  
8 qualification standards for listed arbitrators based upon relevant  
9 training, experience, and performance.

10 (c) No person shall serve as an arbitrator in any arbitration in  
11 which that person has any financial or personal interest in the result  
12 of the arbitration. Prior to accepting an appointment, the  
13 prospective arbitrator shall disclose any circumstances likely to  
14 prevent a prompt hearing or to create a presumption of bias. Upon  
15 receipt of that information, the board or appointed arbitration  
16 association shall immediately replace the arbitrator or  
17 communicate the information to the parties for their comments.  
18 Thereafter, the board or appointed arbitration association shall  
19 determine whether the arbitrator should be disqualified and shall  
20 inform the parties of its decision, which shall be conclusive.

21 (d) The board or appointed arbitration association may appoint  
22 another arbitrator if a vacancy occurs, or if an appointed arbitrator  
23 is unable to serve in a timely manner.

24 (e) (1) The board or appointed arbitration association shall  
25 provide the parties with a list of the times and dates, and locations  
26 of the hearing to be held. The parties shall notify the arbitrator,  
27 within seven calendar days of the mailing of the list, of the times  
28 and dates convenient to each party. If the parties fail to respond to  
29 the arbitrator within the seven-day period, the arbitrator shall fix  
30 the time, place, and location of the hearing. An arbitrator may, at  
31 the arbitrator's sole discretion, make an inspection of the  
32 construction site which is the subject of the arbitration. The  
33 arbitrator shall notify the parties of the time and date set for the  
34 inspection. Any party who so desires may be present at the  
35 inspection.

36 (2) The board or appointed arbitration association shall fix the  
37 time, place, and location of the hearing for all cases referred to  
38 arbitration pursuant to subdivision (b) of Section 7085. An  
39 arbitrator may, at the arbitrator's sole discretion, make an  
40 inspection of the construction site which is the subject of the



1 arbitration. The arbitrator shall notify the parties of the time and  
2 date set for the inspection. Any party who desires may be present  
3 at the inspection.

4 (f) Any person having a direct interest in the arbitration is  
5 entitled to attend the hearing. The arbitrator shall otherwise have  
6 the power to require the exclusion of any witness, other than a  
7 party or other essential person, during the testimony of any other  
8 witness. It shall be discretionary with the arbitrator to determine  
9 the propriety of the attendance of any other person.

10 (g) Hearings shall be adjourned by the arbitrator only for good  
11 cause.

12 (h) A record is not required to be taken of the proceedings.  
13 However, any party to the proceeding may have a record made at  
14 its own expense. The parties may make appropriate notes of the  
15 proceedings.

16 (i) The hearing shall be conducted by the arbitrator in any  
17 manner which will permit full and expeditious presentation of the  
18 case by both parties. Consistent with the expedited nature of  
19 arbitration, the arbitrator shall establish the extent of, and schedule  
20 for, the protection of relevant documents and other information,  
21 the identification of any witnesses to be called, and a schedule for  
22 any hearings to elicit facts solely within the knowledge of one  
23 party. The complaining party shall present its claims, proofs, and  
24 witnesses, who shall submit to questions or other examination. The  
25 defending party shall then present its defenses, proofs, and  
26 witnesses, who shall submit to questions or other examination. The  
27 arbitrator has discretion to vary this procedure but shall afford full  
28 and equal opportunity to the parties for the presentation of any  
29 material or relevant proofs.

30 (j) The arbitration may proceed in the absence of any party  
31 who, after due notice, fails to be present. The arbitrator shall  
32 require the attending party to submit supporting evidence in order  
33 to make an award. An award for the attending party shall not be  
34 based solely on the fact that the other party has failed to appear at  
35 the arbitration hearing.

36 (k) The arbitrator shall be the sole judge of the relevancy and  
37 materiality of the evidence offered and conformity to legal rules  
38 of evidence shall not be required.

39 (l) The arbitrator may receive and consider documentary  
40 evidence. Documents to be considered by the arbitrator may be



1 submitted prior to the hearing. However, a copy shall be  
2 simultaneously transmitted to all other parties and to the board or  
3 appointed arbitration association for transmittal to the arbitrator or  
4 board appointed arbitrator.

5 (m) The arbitrator shall specifically inquire of the parties  
6 whether they have any further proofs to offer or witnesses to be  
7 heard. Upon receiving negative replies, the arbitrator shall declare  
8 the hearing closed and minutes thereof shall be recorded. If briefs  
9 are to be filed, the hearing shall be declared closed as of the final  
10 date set by the arbitrator for the receipt of briefs. If documents are  
11 to be filed as requested by the arbitrator and the date set for their  
12 receipt is later than that set for the receipt of briefs, the later date  
13 shall be the date of closing the hearings. The time limit within  
14 which the arbitrator is required to make the award shall commence  
15 to run, in the absence of other agreements by the parties, upon the  
16 closing of the hearings.

17 (n) The hearing may be reopened on the arbitrator's own  
18 motion. The arbitrator shall have 30 calendar days from the closing  
19 of the reopened hearing within which to make an award.

20 (o) Any party who proceeds with the arbitration after  
21 knowledge that any provision or requirement of these rules has not  
22 been complied with, and who fails to state his or her objections to  
23 the arbitrator in writing, within 10 calendar days of close of  
24 hearing, shall be deemed to have waived his or her right to object.

25 (p) (1) Except as provided in paragraph (2), any papers or  
26 process necessary or proper for the initiation or continuation of an  
27 arbitration under these rules and for any court action in connection  
28 therewith, or for the entry of judgment on an award made  
29 thereunder, may be served upon any party (A) by regular mail  
30 addressed to that party or his or her attorney at the parties' last  
31 known addresses, or (B) by personal service.

32 (2) Notwithstanding paragraph (1), in all cases referred to  
33 arbitration pursuant to subdivision (b) of Section 7085 in which  
34 the contractor fails or refuses to return an executed copy of the  
35 notice to arbitrate within the time specified, any papers or process  
36 specified in paragraph (1) to be sent to the contractor, including the  
37 notice of hearing, shall be mailed by certified mail to the  
38 contractor's address of record.

39 (q) The award shall be made promptly by the arbitrator, and  
40 unless otherwise agreed by the parties, no later than 30 calendar



1 days from the date of closing the hearing, or if oral hearing has  
2 been waived, from the date of transmitting the final statements and  
3 proofs to the arbitrator.

4 The arbitrator may for good cause extend any period of time  
5 established by these rules, except the time for making the award.  
6 The arbitrator shall notify the parties of any extension and the  
7 reason therefor.

8 (r) The arbitrator may grant any remedy or relief that the  
9 arbitrator deems just and equitable and within the scope of the  
10 board's referral and the requirements of the board. The arbitrator,  
11 in his or her sole discretion, may award costs or expenses.

12 (s) The award shall become final 30 calendar days from the date  
13 the arbitration award is issued. The arbitrator, upon written  
14 application of a party to the arbitration, may correct the award  
15 upon the following grounds:

16 (1) There was an evident miscalculation of figures or an  
17 evident mistake in the description of any person, things, or  
18 property referred to in the award.

19 (2) There is any other clerical error in the award, not affecting  
20 the merits of the controversy.

21 An application for correction of the award shall be made within  
22 10 calendar days of the date of service of the award by serving a  
23 copy of the application on the arbitrator, and all other parties to the  
24 arbitration. Any party to the arbitration may make a written  
25 objection to the application for correction by serving a copy of the  
26 written objection on the arbitrator, the board, and all other parties  
27 to the arbitration, within 10 calendar days of the date of service of  
28 the application for correction.

29 The arbitrator shall either deny the application or correct the  
30 award within 30 calendar days of the date of service of the original  
31 award by mailing a copy of the denial or correction to all parties  
32 to the arbitration. Any appeal from the denial or correction shall  
33 be filed with a court of competent jurisdiction and a true copy  
34 thereof shall be filed with the arbitrator or appointed arbitration  
35 association within 30 calendar days of the issuance of the award,  
36 before the award becomes final. The award shall be in writing, and  
37 shall be signed by the arbitrator or a majority of them. If no appeal  
38 is filed within the 30-calendar day period, it shall become a final  
39 order of the registrar.

1 (t) Service of the award by certified mail shall be effective if a  
2 certified letter containing the award, or a true copy thereof, is  
3 mailed by the arbitrator or arbitration association to each party or  
4 to a party's attorney of record at their last known address, address  
5 of record, or by personally serving any party. Service may be  
6 proved in the manner authorized in civil actions.

7 (u) The board shall pay the expenses of one expert witness  
8 appointed by the board when the services of an expert witness are  
9 requested by either party involved in arbitration pursuant to this  
10 article and are deemed necessary by the board. Parties who choose  
11 to present the findings of another expert witness as evidence shall  
12 pay for those services. Payment for expert witnesses appointed by  
13 the board shall be limited to the expert witness costs for inspection  
14 of the problem at the construction site, preparation of the expert  
15 witness' report, and expert witness fees for appearing or testifying  
16 at a hearing. All requests for payment to an expert witness shall be  
17 submitted on a form that has been approved by the registrar. All  
18 requests for payment to an expert witness shall be reviewed and  
19 approved by the board prior to payment. The registrar shall advise  
20 the parties that names of industry experts may be obtained by  
21 requesting this information from the registrar.

22 (v) The arbitrator shall interpret and apply these rules insofar  
23 as they relate to his or her powers and duties.

24 (w) The following shall apply as to court procedure and  
25 exclusion of liability:

26 (1) The board, the appointed arbitration association, or any  
27 arbitrator in a proceeding under these rules is not a necessary party  
28 in judicial proceedings relating to the arbitration.

29 (2) Parties to these rules shall be deemed to have consented that  
30 judgment upon the arbitration award may be entered in any federal  
31 or state court having jurisdiction thereof.

32 (3) The board, the appointed arbitration association, or any  
33 arbitrator is not liable to any party for any act or omission in  
34 connection with any arbitration conducted under these rules.

35 SEC. 3. Section 7085.6 of the Business and Professions Code  
36 is amended to read:

37 7085.6. (a) (1) The failure of a licensee to comply with an  
38 arbitration award rendered under this article shall result in the  
39 automatic suspension of a license by operation of law.

(2) The registrar shall notify the licensee by certified mail of the failure to comply with the arbitrator's award, and that the license shall be automatically suspended 30 calendar days from the date of that notice.

(3) The licensee may appeal the suspension for noncompliance within 15 calendar days after service of the notice by written notice to the registrar.

(4) Reinstatement may be made at any time following the suspension by complying with the arbitrator's award and the final order of the registrar. If no reinstatement of the license is made within 90 days of the date of the automatic suspension, the license and any other contractors' license issued to the licensee shall be automatically revoked by operation of law for a period to be determined by the registrar pursuant to Section 7102.

(5) The registrar may delay, for good cause, the revocation of a contractor's license for failure to comply with the arbitration award. The delay in the revocation of the license shall not exceed one year. When seeking a delay of the revocation of his or her license, a licensee shall apply to the registrar in writing prior to the date of the revocation of the licensee's license by operation of law and state the reasons that establish good cause for the delay. The registrar's power to grant a delay of the revocation shall expire upon the effective date of the revocation of the licensee's license by operation of law.

(b) The licensee shall be automatically prohibited from serving as an officer, director, associate, partner, or qualifying individual of another licensee, for the period determined by the registrar and the employment, election, or association of ~~such a~~ *that* person by another licensee shall constitute grounds for disciplinary action. Any qualifier disassociated pursuant to this section shall be replaced within 90 days from the date of disassociation. Upon failure to replace the qualifier within 90 days of the disassociation, the license of the other licensee shall be automatically suspended or the qualifier's classification removed at the end of the 90 days.

SEC. 4. Section 7090.1 of the Business and Professions Code is amended to read:

7090.1. (a) (1) Notwithstanding any other provisions of law, the failure to pay a civil penalty, or to comply with an order of correction or an order to pay a specified sum to an injured party in lieu of correction once the order has become final, shall result in

1 the automatic suspension of a license by operation of law 30 days  
2 after noncompliance with the terms of the order.

3 (2) The registrar shall notify the licensee in writing of the  
4 failure to comply with the final order and that the license shall be  
5 suspended 30 days from the date of the notice.

6 (3) The licensee may contest the determination of  
7 noncompliance within 15 days after service of the notice, by  
8 written notice to the registrar. Upon receipt of the written notice,  
9 the registrar may reconsider the determination and after  
10 reconsideration may affirm or set aside the suspension.

11 (4) Reinstatement may be made at any time following the  
12 suspension by complying with the final order of the citation. If no  
13 reinstatement of the license is made within one year of the date of  
14 the automatic suspension, the cited license and any other  
15 contractors' license issued to the licensee shall be automatically  
16 revoked by operation of law for a period to be determined by the  
17 registrar pursuant to Section 7102.

18 (5) The registrar may delay, for good cause, the revocation of  
19 a contractor's license for failure to comply with the final order of  
20 the citation. The delay in the revocation of the license shall not  
21 exceed one year. When seeking a delay of the revocation of his or  
22 her license, a licensee shall apply to the registrar in writing prior  
23 to the date of the revocation of the licensee's license by operation  
24 of law and state the reasons that establish good cause for the delay.  
25 The registrar's power to grant a delay of the revocation shall expire  
26 upon the effective date of the revocation of the licensee's license  
27 by operation of law.

28 (b) The cited licensee shall also be automatically prohibited  
29 from serving as an officer, director, associate, partner, or  
30 qualifying individual of another licensee, for the period  
31 determined by the registrar, and the employment, election, or  
32 association of ~~such a~~ that person by a licensee shall constitute  
33 grounds for disciplinary action. Any qualifier disassociated  
34 pursuant to this section shall be replaced within 90 days of the date  
35 of disassociation. Upon failure to replace the qualifier within 90  
36 days of the prohibition, the license of the other licensee shall be  
37 automatically suspended or the qualifier's classification removed  
38 at the end of the 90 days.

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